



## MISSOULA POLICE DEPARTMENT POLICY MANUAL

**Subject:**

### **ARRESTABLE OFFENSES AND DISCRETION**

**Effective Date:**

**4/25/2018**

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**12/01/2008**

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**4/25/2019**

**Chapter**

**5**

**Policy #**

**5.10**

**Distribution:**

**References:**

**MCA 46-6-105, MCA 46-6-311, MCA 46-6-102, State v. Ellinger, MPD Policy 10.20  
MCA 46-6-313, State v. Bauer**

### **I. Purpose**

The purpose of this policy is to provide law enforcement officers of this agency with guidelines for determining whether offenders may be subject to arrest and placed in custody for misdemeanor and/or felony offenses or warrants. Officers are expected to use of professional judgment and recognition of situational or other factors when making arrests.

### **II. Policy**

Officers may only arrest offenders when incarceration is statutorily authorized as a potential penalty for a conviction of the offense, unless there are other extraordinary circumstances. Such circumstances are enumerated in State v. Bauer, quoted in section V. below. If probable cause exists arrest should only be an option if immediate arrest is appropriate. Officers have discretion on whether to arrest or cite a person for certain criminal and traffic offenses, based on the totality of the circumstances.

### **III. Definitions**

**Probable Cause-** At the time of arrest, if the facts and circumstances within the officer's personal knowledge or upon information imparted to him by a reliable source, are sufficient to warrant a reasonable person to believe that the suspect has committed an offense.

### **IV. Procedures**

1. Officers shall ensure there is probable cause to make any arrest.
2. The decision to arrest shall be made using all available information and includes, but is not limited to, the seriousness of the offense, public safety, safety of the victim, weapon involvement, the nature of the incident, demeanor of the subject and the probability of the person appearing in court if released on their own.
3. If uncertain about whether to arrest a subject, officers should contact the Shift Commander or their supervisor.

4. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of restraining order, or other imminent danger to the victim.
5. Officers shall be familiar with those offenses that do not permit arrest of a person. City Ordinances and those statutes without jail as a penalty do not allow an arrest.
6. Most traffic offenses do not allow jail time for violations. The following traffic offenses do allow jail time as part of the penalty for violations;
  - a. Third offense fail to have proof of insurance or to have insurance (61-6-301, 61-6-302)
  - b. Driving while license/privilege to do so is suspended or revoked (61-5-212)
  - c. Reckless driving
  - d. Reckless Eluding
  - e. DUI
7. The following criminal offences do not have jail time for a first offense;
  - a. Misdemeanor theft (45-6-301)
  - b. Misdemeanor Issuing a bad check (45-6-316)
  - c. Misdemeanor Deceptive Practices (45-6-317)
  - d. Misdemeanor Forgery (45-6-325)
  - e. Misdemeanor Theft of Identity (45-6-332)
  - f. Disorderly Conduct (45-8-101)
    - i. Arrest is acceptable for violations of sections g and h of disorderly conduct. (Transmitting a false report of a fire or other catastrophe that endangers human life and creating a hazardous or physically offensive condition.)
  - g. Misdemeanor Distribution of Dangerous Drugs (45-9-101(3))
    - i. Misdemeanor Distribution of Dangerous Drugs refers to giving away or sharing a dangerous drug.
8. Maintaining a Public Nuisance (45-8-111) is never an arrestable offense.
9. A person may not be arrested in the person's home or private dwelling place at night (defined in case law as the actual hours of darkness) for a misdemeanor committed at some other time and place except with a warrant endorsed by a judge. The only exception to this is for the offense of Partner or Family Member Assault.
10. Electors can only be arrested for treason, felony or breach of the peace when they are attending an election or while going to and returning from the election.
11. Senators and Representatives can only be arrested for felony or breach of the peace violations during state legislature sessions and going to or returning from the same.

12. Militia may only be arrested for treason, felony or breach of peace when they are attending muster and while going to and returning from the muster.
13. Judges, attorneys, clerks, sheriffs and other court officers shall be privileged from arrest while attending court and while going to and returning from court.
14. Officers shall make a written report of any custodial arrest resulting in the legal release of an arrestee as applicable under M.C.A. 46-6-313.

## **V. Montana State Case Law**

### **\*Montana Supreme Court Decision 2001 (State v. Bauer)**

"We hold that under Article II, Section 10 and Section 11, of the Montana Constitution, it is unreasonable for a police officer to affect an arrest and detention for a non-jailable offense when there are no circumstances to justify an immediate arrest. In the absence of special circumstances such as a concern for the safety of the offender or the public, a person stopped for a non-jailable offense such as second offense, MIP, or a seatbelt infraction should not be subjected to the indignity of an arrest and police station detention when a simple, non-intrusive notice to appear pursuant to § 46-6-310(1), MCA, will serve the interests of law enforcement.